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Chair

The Honourable Wayne Easter

Standing Committee on Finance

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● (1610)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): We will call the meeting to order.

We are continuing our study and statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

We have a couple of witnesses here, and I understand Mr. Kmiec has a motion as well.

I absolutely must attend another meeting at 4:15. Mr. Albas, we have a procedural problem here. Normally we would go to Mr. Poilievre, then we would go to Mr. Julian. Neither of them are here.

Could we have agreement to have Mr. Albas chair until we start committee business? I'll be back by that time. Can we have agreement?

Some hon. members: Agreed.

The Chair: Mr. Albas, the floor is yours. You can deal with the motion. Thank you, Dan.

The Acting Chair (Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC)): Good afternoon, everyone.

Mr. Kmiec, I understand you have a motion that's already been ruled in order.

Mr. Tom Kmiec (Calgary Shepard, CPC): It's the one on mortgages, for which I gave notice weeks ago.

Can we just repeat for Mr. Masse's benefit, so he understands why you are chairing the meeting instead of our regular chair? I think he was just walking in, when the chair was explaining what we were doing and ceded the chairmanship to you, Mr. Albas.

The Acting Chair (Mr. Dan Albas): I'm happy to do that, Mr. Masse. Thanks for coming today.

The chair is indisposed with another meeting. Our vice-chair is not here. As well, the second vice-chair, who you are replacing today, is not here, so the committee has given unanimous consent to see today's proceedings move forward. I trust that you're fine with that.

Mr. Brian Masse (Windsor West, NDP): Yes, sir.

The Acting Chair (Mr. Dan Albas): Perfect.

Not seeing anything else, I'm going to let Mr. Kmiec go on with his notice of motion.

Mr. Tom Kmiec: I won't read it because it is a long motion, but this would have been the motion I placed on notice with the committee on finance to research a report on the impact of changes to mortgage rules. These are B-20 mortgage rule changes that were introduced January 1 by the OFSI. It has multiple parts to it.

One of the key ones I want to mention.... I was looking at the calendar the committee had and I noticed there will be openings in June, but also, obviously there's a calendar for the fall. This motion is worded carefully to say that this study would begin after the statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act is completed and tabled in the House. I'm very conscious that we first need to finish the study we're currently on. I know there will be pre-budget round tables afterward. I don't want to upstage that. I don't want to replace it.

I'm simply saying for planning purposes at the finance committee, I believe this should be the next one that we undertake. I'm simply moving it so we can start a conversation about it and then see where the conversation goes at the table.

I believe that the B-20 rule changes are having a pretty heavy impact on mortgages and the ability of Canadians to renew their mortgages. There has been talk already. I have a couple of news articles I'm going to refer to on this new stress test, the 2% increase that homeowners, when they're renewing their mortgage, have to comply with.

There are many individuals. There are as many as 50,000 Canadians who may be prevented from buying a house, who before would have been able to do so, according to the CBC. This was an article not too long ago. There are 100,000 Canadians who will fail the stress test who already have a mortgage with their lender. They will not be able to get a renewal of their mortgage with any other lender. They will basically be trapped with the lender they're with currently. I think that's an issue the committee should be seized with and look at whether these rule changes and the way the stress test is working are actually to the benefit of the public and the benefit of Canadians.

A stat I got from the CIBC capital market report is that 47% of all existing mortgages will need to be refinanced in 2018, which is actually up from the 25% to 35% range in a normal year. It has already had an impact, people are seeking shorter mortgages and having to renew them more often or they're not being able to qualify here.

Again, I think this is an issue we should look at. I think it's an important one. I think a lot of Canadians are being cut off now. I get these a lot. I have received a lot of emails and phone calls from constituents in my riding. Probably there are about half a dozen serious cases and in maybe two dozen I'd say they're looking out in the next year ahead and seeing that they may have difficulty. For a lot of them, it's spousal situations or spousal breakdowns actually, where they had the income necessary to renew their mortgage and would be able to under normal circumstances, but the condition in Calgary is 8% unemployment and a great deal of underemployment, so people are having a difficult time proving income at renewal time in order to get the renewal.

A 2% stress test just adds on to that burden. We've seen the central bank increase the prime lending rate, which obviously has an impact because then you're getting to an even higher rate that you're trying to renew for. The mortgage carrying costs, which I want to mention, have risen substantially in almost all Canadian cities, according to a 2017 RBC report. I'm sure for 2018, that's just going to get worse.

Despite that OFSI made this rule change on January 1, which I'm sure was coming down the pipe from before, I'm sure it was something they were going to do anyway, a lot of people knew it was coming down, so the volume of mortgages being renewed was moved. You can see the volume was actually quite high in December 2017, and then goes down substantially afterwards. It hasn't picked up in May. I was waiting to see in May if there would be pickup. Typically May and June are really good months for mortgages in general. People go out, they see homes, it's springtime. They're either looking to upgrade, downsize, or they're looking to get a different type of property or just entry into the market. This is the time of year when you do it. This is the time of year when I did it when I purchased my house many years ago.

I think these B-20 rule changes are affecting new entrants into the property markets. Getting onto that property ladder, investing in your house is the best investment you will make, probably the best financial investment you will make if you manage it very wisely.

The second part of it is that it makes you invest in the community you're in. For a lot of the communities, where there is a high proportion of property ownership, typically, the community associations and resident associations in my riding do much better than in those areas where there is a high proportion of short-term renters, not long-term renters. Long-term renters take care of their homes and they really do care about the areas they live in and invest themselves in their communities.

● (1615)

According to the *Financial Post*, first-time buyers seem to be one of the groups most impacted by the B-20. Early results are saying that the stress test—as proposed—has squeezed millennials' home-buying budgets by about $40,000. That's about 16%. I asked Mr. Poloz, the Governor of the Bank of Canada, when they would have the data necessary to do an assessment, and he said maybe in a year. I think we could start in the fall, after we've completed the statutory study that we're undertaking right now, in order to be able to have this on the docket and to be able to basically ask the Bank of Canada and others to produce data. There are many associations that have already started to do so.

I also want to give the context, though, for this study on B-20. This isn't the only rule change affecting mortgages. I'm just going to count them through, starting on December 2015, I see one, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13—that's quite a few—14, 15, 16, 17, 18, 19 rule changes affecting mortgages leading up to this point. So the thing with B-20 is its cascade effect.

You have a series of rule changes and you now have interest rates that have gone up and they've made it more difficult for people to renew their mortgages or get into the property market, so I think this is worthy of study because we can look at B-20 by itself but we also have the benefit of two years of data impact on each rule change as it has come through.

I think that's beneficial. I think it's timely as well to do it in the fall. We'll see what the summer gives us in terms of volume sales, in terms of changes in pricing. I think B-20 was intended to target the Vancouver and Toronto markets specifically but the impact has been huge in small communities and in smaller cities, and I think when we look at the Canadian market, there's no such thing as one Canadian real estate market. There are a whole bunch of different markets. You compare homes in a locality, close to work, close to a good school—typically that's what our parents looked for. For those who don't have any kids, you're looking for easier transportation. Getting to and from work and going to the grocery store, those are the things they're looking at. Those people, new entrants, are being priced out of the market with these B-20 rule changes.

I have a list of the groups that I think we should specifically look at. If we pass it now, especially, we'll give the summer to all these different mortgage brokers and different associations, different business groups, to do some data work in anticipation of the committee undertaking a mortgage study.

Lastly, because I want to cede the ground and hear from the other side about what we could agree to on a study here, the *Financial Post* is reporting that mortgage growth in Canada hasn't been this weak since 2001. According to RBC, as of March, home sales in Calgary have plunged 18% year over year. Victoria's are down 19% year over year. The head of the Ontario Real Estate Association, Mr. Tim Hudak, said the cumulative effect of the new mortgage changes amounts to what he called "a war on homebuyers". That was reported in the Huffington Post, and I think one of the most serious ones here is—and this is the one I'll finish on—the warning from Mortgage Professionals Canada that this new stress test would reduce housing demand by as much as 15%, in their view, resulting in 100,000 to 150,000 fewer jobs in the economy. That's 15% on demand. It's pretty big for one singular rule change.

I think it's worth studying just because it will have such a big impact on Canada's GDP growth at the end of the term, and we know what the numbers are like in budget 2018. I know that the fall is when we usually do our pre-budget round tables, so I think this study goes along very nicely with being able to inform the government on what it could do better, whether the rule change by OSFI was the wrong one, whether there are amendments to it, whether going back.... A lot of the proposals I've heard from industry are not saying to get rid of B-20 completely. They're just saying we should change the way it is being implemented, modify the stress test to something else, and make certain other changes to the rules as well.

I'm going to finish there. I'm willing to have a conversation about whether we could find unanimity here and find approval for this study, again, to start after the current one. That's the way the motion is worded—that after the current study is completed, this would be the next one to come up.

With that I'm going to cede the time. I'm sure members know I'm more than happy to talk it out, but I know we have guests here who are going to inform us on the review we're undertaking right now, so I'm looking forward to the conversation.

● (1620)

The Acting Chair (Mr. Dan Albas): Thank you, Mr. Kmiec.

Now before we go to debate, I was a bit remiss in jumping ahead and letting you go forward. Obviously, this is a notice of motion that you placed Monday, February 26, 2018, so it would be in order for us to speak today. Before I go to debate on Mr. Kmiec's motion, I just want to thank our guests for being here, Mr. Barutciski and Mr. German. We are just going to do some of this business first, and then we'll be moving on to our study.

That being said, Mr. Kelly has indicated that he would like to speak. Would any other members like to speak as well?

No? Okay.

Mr. Kelly.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): I don't want to take up very much time. I am aware that we have witnesses on an important study that is already under way.

Mr. Kmiec put it quite well, so the only thing I will add, on top of what Tom has said, is just to suggest to my colleagues across...and I hope they might have something to say about this. We know that in all ridings, we all face this issue. Home ownership is an important issue for all Canadians, in every part of Canada. There's no part of Canada that hasn't been affected by significant changes to the mortgage business, and to the availability of mortgage credit. I hope we will take this opportunity and have this study in the fall, before the pre-budget consultation.

With that, I will invite my other colleagues to weigh in on the debate on the motion.

The Acting Chair (Mr. Dan Albas): Thank you, Mr. Kelly.

Would any other members like to speak up?

Not seeing any hands, we'll bring this to a vote.

Mr. Tom Kmiec: I'd like a recorded vote, please.

(Motion negatived: nays 5; yeas 3)

The Acting Chair (Mr. Dan Albas): We'll move back to our business of the day. Pursuant to Standing Order 108(2), we're continuing today our statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. This is our 12th meeting on this subject, and we have with us today Peter German, president of the International Centre for Criminal Law Reform at UBC, and Milos Barutciski, partner at Bennett Jones.

Welcome to you both. I appreciate your patience, and I understand you both have an opening statement.

Mr. German, are we starting with you first?

● (1625)

Mr. Milos Barutciski (Partner, Bennett Jones LLP, As an Individual): Mr. Chairman, if you don't mind, Mr. German and I have decided he'll lead and I'll follow.

The Acting Chair (Mr. Dan Albas): Excellent. Please, the floor is yours, Mr. German.

Mr. Peter German (President, International Centre for Criminal Law Reform, University of British Columbia, As an Individual): Thank you to the committee, and thank you, Mr. Chair. I appreciate the invitation to be here, and hopefully we can provide some opinions that will be of assistance to you in your work.

I have to say, at the outset, that the opinions I express are mine alone, not those of the international centre, nor of the Province of British Columbia. I suspect the reason I'm here is the result of the attorney general's visit. My briefing note actually was provided to the committee by the attorney general.

Just to give you a little bit of a background, I'm a lawyer, former deputy commissioner of the RCMP, and former deputy commissioner of federal corrections. My doctoral work was in asset recovery of money stolen by kleptocrats in the developing world, getting that money back to the developed world. I'm the author of a text on money laundering, *Proceeds of Crime and Money Laundering*, which has been in publication for about 20 years and remains current. I was most recently commissioned by the Attorney General of British Columbia to inquire into allegations of money laundering in our casinos. I come to you today with that as a background, with that as a perspective. If I may, I'll take five or so minutes to give you a few thoughts.

The task you have in front of you, committee, is actually a very important one. I'm sure you're aware of that. This proceeds of crime legislation is important on any number of fronts. I don't wish to start on a negative note, but I will. There are some fundamental problems with our enforcement regime. Canada itself really has not too much to be proud of when it comes to dealing with money laundering. Canada has been a follower rather than a leader internationally. This is nothing new. This has been going on for some 20 years, since 1989 when proceeds of crime legislation first came in.

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act is good legislation as far as it goes, but again Canada tends to always be following the lead of other countries—the United Kingdom, the United States—always getting pushed by the FATF, always getting pushed by the OECD—

The Acting Chair (Mr. Dan Albas): Mr. German, I'm sorry to interrupt, but we do have bells that are ringing indicating that there's an imminent vote. Subject to the rules of the committee, I have to interrupt you and ask committee members if we can have permission to go for another 15 to 20 minutes. We're a little farther away so we'll make that 10 minutes, and we will just ask you to continue.

Do I have the unanimous consent of everyone here?

Some hon. members: Agreed.

The Acting Chair (Mr. Dan Albas): Thank you, sir, and sorry about the interruption.

Mr. Peter German: Thank you.

I'll outline a couple of problems. Number one, there is a lack of urgency in terms of how Canada deals with this problem. This is nothing new. It's not something that happened this year or last year. It has been ongoing. I'll give you a very brief example: cryptocurrency. We all know about cryptocurrency. In 2014 there were statutory changes and four years later we're still waiting for the regulations. That is typical of what we see. I realize things don't happen instantly.

Number two is the balancing that takes place. If one looks at the paper prepared by Finance, one sees that it's well written, but it constantly talks about balancing crime control with, first, privacy, which we realize is important; second, undue burden on entities that are regulated; and third, public resources.

I would say that one has to realize that money laundering is all about organized crime. Organized crime is all about drugs, fentanyl, any number of commodities. It's about people dying on the streets. Just as you would not want your police to say, "Well, it's a domestic assault. We have a little balancing to do. We might not be able to come over to the house for a little while", it's no different when you talk about money laundering. This is the way to deal with organized crime.

We have to be very careful when we balance. What we really have to do is apportion resources and do the best that we can with those resources, which leads me into the issue of enforcement. It is great to have a Proceeds of Crime (Money Laundering) and Terrorist Financing Act. It's great to create this framework and all the regulations, and FINTRAC and requiring entities to report, and accumulating lots of information and intelligence, but if there's no one doing anything with it, you're wasting a whole lot of government money and you're wasting a whole lot of the money of the entities that are being asked to report.

Although there are a number of agencies that receive intelligence from FINTRAC, there's really only one agency that is tasked with conducting complex money-laundering investigations, and that's the RCMP. Quite frankly, the RCMP left this field in 2012 and is just now getting back into it. We're seeing the implications of that in British Columbia. The RCMP, admittedly, is doing their best to recreate the units that were abolished, such as proceeds of crime sections, commercial crime sections, and so forth.

You have this framework and you're building on that framework and you're trying to cover off the loopholes. As I believe the attorney general mentioned, it's a bit of a whack-a-mole. You cover off one area and then you have to look at other weaknesses in the economy, but none of that will really get you anywhere unless there's someone dealing with enforcement.

In the money laundering strategy that the Department of Finance has it refers to the third pillar being disruption. I gather disruption includes various things, but part of it is enforcement and right now you're just not seeing enforcement.

I can go on at great length, but I'll stop there. That's about five or so minutes and I'll turn it over to my friend. Thank you.

● (1630)

The Acting Chair (Mr. Dan Albas): Thank you.

Mr. Barutciski.

Mr. Milos Barutciski: Thank you, Mr. Chairman.

I'm Milos Barutciski, as the chair said, a partner at Bennett Jones, a national law firm. I'm in the Toronto office. It's originally a Calgary firm.

[*Translation*]

That said, as I am a Quebecker, I will start my presentation in French. Why not? It is worthwhile.

Like Mr. German, I am a lawyer. We know each other well and go way back, but we did not know that we would both be here today. You won't be too surprised to learn that my point of view is somewhat similar, I think, to Mr. German's point of view. It is not identical, and that is because our roots are different. Mr. German was a police officer for a number of decades. I myself am a lawyer and, as such, I have mainly represented businesses for just over 30 years. I began my career in Montreal, and then I continued it in Ottawa. I am now in Toronto, and I have been there for 25 years.

I advise people, I defend companies, mainly, and rarely individuals, in matters related to international economic regulations.

[*English*]

I was chief of staff for the competition bureau for my brief two years in government, but I used to do a lot of cartel work. I don't do much of that anymore because I have other partners who have been doing it as long as I have, and frankly, I focus my attention on other things.

What do I do? For the past 10 to 15 years I've been focusing on corruption work, sanctions—essentially that kind of economic regulatory work. My clients, as I said, are primarily corporate. It's a very different perspective from where Peter comes from, but my views are not entirely different from Peter's.

Let's start with money laundering, which is obviously a real problem. The impact runs through every sector of the economy. We tend to think of it as being the criminal world, and of course it is, but sadly, the billions of dollars that are laundered in this country alone don't only go from one crook's pocket to another crook's pocket. They go through a chain of professionals, legitimate businesses, and thousands of other enablers who are not so much unsuspecting, but rather wilfully blind or willing to look the other way. That is a problem.

I remember back probably 15 to 20 years ago—Peter will remember this—when Norm Inkster retired as commissioner of the RCMP. He used to give this speech that started with about 15 minutes of "Let me tell you about your day". Nobody smokes anymore, because people walked away from them, but back then, in the early 1990s, when you were waiting at the bus stop, you were smoking a cigarette that was smuggled through customs on a reserve, perhaps, or somewhere else. It was proceeds of crime, and you were doing this, and you were doing that. I won't repeat the story, but basically, what Norm told was a story of how you can't go through the day without being impacted and affected by money laundering.

The answer was the regime we have today, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, albeit that the "TF" was clipped on a little later, after 9/11. It came out of the FATF, the Financial Action Task Force process in Paris, of which Canada has been a member for a long time. The whole idea was to raise the cost of laundering crooked money. As I recall, back in the 1990s, it was six to eight cents. Has anybody ever actually looked at how much it costs today to launder money? It's probably not much more than six to eight cents. In certain segments, it's probably gone up to 15¢, but you know, the crooks don't sleep at night either. They go to a party and then they work all night, too, and they find other workarounds. We'll hear Peter's report in due course, but in his province of B.C., it seems they're taking it at both ends.

The regime was intended to raise the cost of laundering money, and the way it was done was by creating gatekeepers—primarily financial institutions. The idea was that we might make a dent in the problem by making the essential gatekeepers the FIs, accountants, and lawyers, although there's a whole story about lawyers that we don't need to get caught up in. By making the people who facilitate and enable and move the money accountable up to a point at which they at least have to do basic due diligence and then report or keep records, as the case may be, we can actually make a dent in it.

If we're not making a dent, then what on earth are we doing? I can tell you, back in the early 2000s, I was a private practitioner. There were a handful of us advising the FIs on implementation of the regulations, and it was a fairly active business. In the early days of the regulations coming into force—somewhere around 2004-06—I worked on possibly the first AML audit that OSFI did, and on the back of the envelope, based on the work we did to remediate, I calculated that the five schedule I banks and the insurance companies had, between them, spent somewhere around $5 billion just implementing the system.

Since then we have accumulated massive costs. We've downloaded those costs, as Peter said, on the FIs primarily, but also on other sectors of the economy. That would be fine if we were actually getting something—if we were actually fighting and enforcing crime—but we're not. Some of the questions you should be asking yourselves in the course of your study of this bill are about exactly that: implementation.

The FIs, my clients, are diligently trying to follow the law by reporting or recording, and sometimes they slip up, but the default position is that they would rather not take a risk by exercising judgment; rather, they will just cover the floor. It becomes checklist compliance. It's not actually compliance with the law, because the people who are not complying—who are overtly stealing, cheating, and so on—just keep doing it. All we've done is impose costs on the private sector that are ultimately passed on to consumers, yet in the absence of any enforcement, what is it? It's a mountain of paper, or bits and bytes.

I come back to the same conclusion as Peter did. The balancing makes sense, but it needs to be balanced for a purpose, not just putting all the costs on the economy. When I say the banks, sure, they're big players out there, but those costs get passed on to consumers. The question is, you're balancing against what? That's what you need to spend some time on.

● (1635)

The Acting Chair (Mr. Dan Albas): Thank you.

I appreciate both of your contributions.

Members, before we break away to vote, if we come back with no unanimous consent to extend at least one round of questioning for our witnesses, I think we may be losing out. That being said, it's your decision. If we come back without some sort of decision, however, we will then be coming back in camera and talking about committee business. The repercussions of coming back and at least doing one round would mean that we'd have to extend the meeting by half an hour. I'm looking to see if the will of the committee is to have that extra half hour tacked on so that we can have these witnesses questioned and added to the record.

● (1640)

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): I think the issue would be, Mr. Chair, that we'd have to have an agreement or a motion to ensure that there would be no motions moved during that extended time, because we may have some timing conflicts with members. In that case, we'd have to scramble to get that covered unless there is an agreement that no motions would be moved during that time.

The Acting Chair (Mr. Dan Albas): It's up to the committee members. Is there unanimous consent to move forward?

Mr. Pat Kelly: Is it no motions when we come back?

The Acting Chair (Mr. Dan Albas): It's just so we can hear from our witnesses.

Mr. Pat Kelly: Some members may have time commitments after 5:30 as it is. I'm not sure if they want to go longer.

The Acting Chair (Mr. Dan Albas): I have been told by the clerk we can't prevent motions. We're at a crossroads. We either extend the meeting or we thank the members.

Ms. Jennifer O'Connell: May I ask a question?

I don't know what's on the agenda for committee business. I'm assuming some of it's the travel. Is there an opportunity to put that off until another time? I don't know what's on the agenda, so I'm not sure how urgent it is.

The Acting Chair (Mr. Dan Albas): I'm told that the business cannot be put off. Again, the clock is ticking.

Mr. Fergus.

Mr. Greg Fergus (Hull—Aylmer, Lib.): I'm a bit of a sucker for.... I know that there's nothing in the rules to prevent us from introducing a motion, but I actually do believe in the good word of the folks around the table. I would ask that we all agree not to have any business so that we can have the opportunity to question these two witnesses who have spent a bit of time and effort coming to appear before us. I would love to pick their brains.

The Acting Chair (Mr. Dan Albas): Okay, we had better come up with something quick.

Mr. Masse.

Mr. Brian Masse: I would agree and you have my word.

The Acting Chair (Mr. Dan Albas): Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): I think we should come back and complete our committee business and then during whatever time we have remaining until 5:30 we can ask questions.

The Acting Chair (Mr. Dan Albas): We don't have the option. We would have to have unanimous consent to come back and question for a round. Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: Gentlemen, please, if you wouldn't mind, we're going to do the people's business and then we'll come back to ask you some specific questions. Then we will continue with committee business right after.

The committee is suspended.

● (1640)

(Pause)

● (1715)

The Acting Chair (Mr. Dan Albas): We are going to continue with moving on to witnesses and asking questions.

To give as many members a chance to ask questions, are we okay with going with five minutes?

Some hon. members: Agreed.

The Acting Chair (Mr. Dan Albas): MP O'Connell please, the floor is yours.

Ms. Jennifer O'Connell: Thank you. Thank you both for being here, with all the changes.

Mr. German, you talked about how in 2012 things really changed and the RCMP are now getting back into it, so to speak. I'm trying to write that down. You gave a couple of examples of the money laundering divisions or departments that were cut. Could you elaborate on that a bit more?

Obviously, as this committee moves forward, we need some recommendations to make to government. In rebuilding these divisions, are there things that we need to do to get back the level of enforcement?

Mr. Peter German: Thank you. That's a great question.

I don't speak for the RCMP, but what happened in or about 2012 or 2013 is that, with the rise of terrorist incidents in Canada and an awareness that we could be subject to terrorism at home, the RCMP moved a lot of resources in that direction. It also restructured its organized crime resources. It collapsed units that had existed for a long time, such as the commercial crime section and proceeds of crime. These units had been around commercial crime since the seventies—a lot of expertise and so forth. They essentially created organized crime teams, and they would attach a couple of specialists to each team, like a specialist in money laundering and fraud.

The problem with that is that you don't have that nucleus of people who can drive a file, so they end up being add-ons to, let's say, a drug investigation. Over time you lose that expertise. My understanding is that now, about five years down the road, white collar crime is starting to rise in terms of profile in the country, or at least in certain parts of the country. Again, I don't speak for the RCMP. Just by reading news reports, it's obvious that they are trying to recreate their expertise in that area. That is so critical, in terms of the work of dealing with proceeds of crime legislation.

I would just add—and this was a concern of mine right from the beginning in 1993, when you had the first proceeds of crime legislation—that it's the Department of Finance that is responsible for this legislation. There's nothing wrong with the Department of Finance. It's just that the Department of Finance does not deal with enforcement. That's the solicitor general. You have two ministries. It's great for finance to be dealing with the framework, but they have to be talking, and you have to make sure the solicitor general is engaged in the game as well. Both departments have to be talking for you to have a holistic approach to this problem.

● (1720)

Ms. Jennifer O'Connell: I'll just quickly speak to—forgive me, I don't know who said it—the point, in the description of how the money essentially gets cleaned, around that happening in instances of the wilfully blind. I want to speak a little bit about the issues of beneficial ownership and those loopholes. I think we've seen a lot of testimony of that issue. Do either of you have an opinion in terms of dealing with beneficial ownership, but also with the legal community's—I don't want to call it a loophole—court ruling, or exception to dealing with some of the issues around lawyers and the legal community in Canada, whereas other jurisdictions don't seem to have that problem.

Mr. Milos Barutciski: On the legal thing, I think it's mostly much ado about very little.

Lawyers generally.... Remember the original regulation that was struck down. It was about lawyers moving money, where lawyers are actually intermediaries, taking funds in trust, and moving it out. Lawyers that take crooked funds in trust and move them around are really at the margins already. They've broken 101 other rules before they did that. To get into a massive fight over that and devote the resources of a lot of well-meaning, well-intentioned advocates for AML regulation to it is actually letting the elephant just march through the door, barrel around, stomp on the flowers, and go back out while we're focusing on a technical issue. It's a pointy-headed technical issue.

I'm not saying that it's not a real issue. I'm not saying that there aren't lawyers who do bad things. All I'm saying is that it's like a drop in the bucket. Remember what it is: it's just lawyers actually handling money. Most of us don't handle the money. The money rarely.... In certain instances, it does, but it's not how most laundered money goes through. What we're doing is allowing a whole bunch of other stuff to go through, and not even unacknowledged but unenforced.

When Peter says there's no enforcement, we have this massive infrastructure that is extremely expensive to maintain and to keep working on and, yes, maintaining.... When I say "extremely", we're talking about billions a year with the reporting entities, but we spend a fraction of that. I said this once to.... I won't mention his name, but he was one of the superintendents of the commercial crime unit a number of years ago. I said, "If you had a choice between having the AML legislation and the information that FINTRAC has and that occasionally you can have access to under certain circumstances, etc., which costs *x* billion dollars, or just getting another $500 million so that you can hire forensic accountants, investigators, and a bunch of people, what would you take?" Hands down, it was, "I'll take the money."

So I ask you guys.... That's why I said to do some studying. Get the data. How many forfeitures have there been? How much money was seized? How many prosecutions have there been for money laundering, etc.? Because right now we have a highly expensive regime that in my view hasn't actually accomplished very much. Why?

The Acting Chair (Mr. Dan Albas): I imagine other members are going to want to go through that, but I have to end it there.

Mr. Peter German: Can I respond to that, if you don't mind? I have a different opinion on that, quite frankly.

If I may, Chair, very briefly...?

The Acting Chair (Mr. Dan Albas): Yes, very briefly. If you can do it in a minute, I would appreciate it.

Mr. Peter German: First, with regard to beneficial ownership, I would make it a rhetorical question. Why should people not want to disclose the true ownership of a corporation? Why hide that in terms of normal commercial dealing?

In terms of lawyers, I would just very quickly point out that the problem is not so much the regulation lawyers; it's the fact of the intelligence. They are gatekeepers in so many different types of businesses, and FINTRAC does not get their information. It's a component that's missing.

I get it with regard to solicitor-client privilege. I'm a lawyer. I understand that. Take B.C. for example, and the notaries who deal with most residential matters, with real estate. They in fact have to report to FINTRAC, so the intel is coming in from notaries, but it's not coming in from lawyers.

The Law Society of B.C. has very strong regulations. I'll agree on that, but lawyers are pivotal in terms of so much of our economy. So much goes through them that it's a bit of a missing link. I don't have an answer for it. I thought I'd just throw that in.

● (1725)

The Acting Chair (Mr. Dan Albas): Thank you. I appreciate that.

Mr. Kelly.

Mr. Pat Kelly: I'm going to pick up on some similar themes.

Mr. German, I was pleased to hear you say it, get it into the record, and validate what I've long heard on this topic: the absence of investigation. I wasn't aware of the absence, the specific gap, in RCMP policy that you spoke of. I'm going to ask you to address that a little further and address how the lack of resources impacts the ability to have a functioning anti-money laundering regime.

Mr. Peter German: Thank you.

I'd like to quote something from the consultation paper itself, which actually is quite telling. The consultation paper on page 34 says that "Canada seldom requests or obtains international assistance in relation to Canadian investigations and prosecutions of money laundering and terrorist financing."

Why?

Virtually all organized crime cases are across borders. Money laundering moves across borders. Why is Canada not making requests? Canada is not making requests because there are police officers investigating these things who make requests, right?

Mr. Pat Kelly: Okay.

Mr. Peter German: It's great to say that the framework is not good enough or that MLATs are difficult and so forth, but the Americans are using MLATs. The Brits are using MLATs. They're coming in here and we're responding to theirs. Again, I hope that's changing. The bottom line is that if we don't have specialists investigating it, people that are trained in this work, and you're organized crime, you're saying, "What are we worried about?"

Mr. Pat Kelly: I wanted to get that strongly on the record. Thank you for that.

Mr. Barutciski, you said something that really caught my attention and resonated with my own experience in industry. You talked about checklist compliance. It immediately struck me that this is the approach that actually makes it easy for a criminal to game the system—by understanding how checklist compliance works—but creates difficulties and confusion, perhaps, for industry practitioners with regard to really understanding what their role is. If you're just ticking boxes, it really takes more of an intangible nose to sense a rotten transaction.

Real estate and mortgages are where my experience is. I was told, in my time, that perhaps as much as 60% of all of the proceeds of all of the crime in Canada is laundered through real estate transactions. I'll let you comment on any of that.

Mr. Milos Barutciski: The issue of checklist compliance isn't limited to this area. We see it in all fields. You have to take it from the standpoint of why a company wants to comply.

We have the fundamental reason and the tone from the top: you don't want your people being crooked because that jeopardizes the business. But human nature being what it is, with people having personal incentives to juice the revenue for this quarter so that they can get the bonus for it or whatever, stuff happens, so the tone from the top is important.

The other thing that motivates companies is exposure to liability. When you have a complex regulatory scheme, like the one we have under the PCMLTFA...and I can point to other schemes that are similar. We've had the same thing happen with the securities law, by the way. The Securities Act, which was supposed to be blue sky legislation to allow investors to understand what there is, is now a quagmire of lack of transparency. But that's the whole point.

Companies invest enormously in mitigating liability. If you're an FI, a bank, a trust company, or an insurance company, and you can get amped because you didn't follow the right process, didn't report the right thing in a timely manner, this, that, and the other, you sit there and you establish systems that mitigate that risk. But that essentially means spending scarce compliance resources on the checklist to comply with the massive regime rather than preventing the harm that the regime is intended to mitigate. You're actually diverting resources away from true compliance.

Get me right. I am not against what FINTRAC does, and I am supportive of what the legislation does. FINTRAC does a certain job. The problem is the disconnect Peter was talking about between the regulatory regime and the enforcement—

● (1730)

Mr. Pat Kelly: That's great. Thank you.

I have just a moment left.

Where does real estate sit in this? Does anybody have any accurate or meaningful stats on how money is laundered in Canada?

Mr. Milos Barutciski: You asked a question about beneficial ownership. I actually do believe that beneficial ownership should be reported.

Where I part company with some of the advocates is on public reporting. I just don't see it, and this isn't the place for me to get into a length discussion of why I think a public registry makes sense. In terms of a confidential registry that can be accessed by government and by law enforcement, I'm completely aligned with Peter. Why would you not want to report?

Mr. Peter German: The problem with real estate is that it's not a level playing field right now. There are certain aspects of real estate that are regulated. There are other aspects that aren't regulated. That's covered in the consultation paper. You have to have a level playing field where either everybody is regulated or nobody is. Hopefully, everybody is regulated.

Then, of course, you also have to make sure that people are reporting—there have been all sorts of reports that this is not happening in the real estate industry—and that someone is, again, doing the enforcement side of things.

Mr. Milos Barutciski: My answer to your question was that beneficial ownership was what will ultimately help clean up the problems in real estate.

The Acting Chair (Mr. Dan Albas): Thank you.

MP Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you, gentlemen. It's been a circus here, and I appreciate your patience.

I've had a high degree of interest in this, having come through a bill I championed, which was recently defeated, on single-event sports wagering. The United States has moved ahead with this in a 6-2 decision and will now, basically, be a bastion for organized crime related to sports betting and also a flag-bearer for nefarious offshore operations that will receive Canadians participating in their operations.

One of the things that is clear about some of the work we did on Bill C-25, with regard to beneficial ownership, is that Canada is considered a laggard in terms of its international reputation for dealing with beneficial ownership. I do want to say, though, for the record, that in terms of public and private disclosure, it's interesting that you can, with that corporate number, ask for the public to subsidize you for everything from your entertainment business expenses to writeoffs, a series of different things, but you don't actually have to disclose ownership of it. You get all the benefits of the public subsidy, being tax deductions, but you don't have to actually disclose what it is that you are....

I would like your comments. What would be the criminal reasons for not wanting to actually provide that public identity?

Mr. Peter German: I differ with Milos on this one. I see no reason why you wouldn't want a public registry. What is there to hide?

If you're getting into shareholdings, there may be a certain threshold level, but in terms of boards of directors and the actual beneficial owners of companies, why wouldn't that be public?

Mr. Brian Masse: I guess you could obviously be withholding criminal intent if you don't want to do it. I mean, it doesn't make those who are not doing it for that particular exclusive reason.... The reality at the end of the day is that there is something potentially to hide.

Mr. Peter German: There's an international movement towards disclosing beneficial ownership. It's coming: United Kingdom, Germany. It's just a matter of time. Now, to what extent remains to be seen. We do have the federal-provincial divide, but of course we know that governments have been talking about this.

Mr. Brian Masse: You've agreed to a private...so maybe distinguish the difference, and then—

Mr. Milos Barutciski: It's not private. I talk about beneficial ownership being disclosed a bit like you disclose information to CRA or any number of government regulators. It's confidential business information.

Let me give you a simple one. If I have a mining and oil and gas company, I'm spending hundreds of millions of dollars or billions of dollars to find where those resources are. If I'm going to signal to my competitors that I'm looking in...I don't know. I think you're an MP for Windsor, so maybe you don't want an open pit mining operation in Windsor.

Mr. Brian Masse: We already have salt mining. It's one of the largest mines in Canada.

Mr. Milos Barutciski: If I'm going to signal to my competitors that there might be the technology and know-how that I've invested to find the resources, that I'm staking out property in a location because I've registered a claim, which is property under this corporate, etc., I'm hurting both myself and the economy. Reporting it to the government so it's available to law enforcement is an entirely different thing.

I'm just giving you that example. I could go on for hours; you don't want me to.

● (1735)

Mr. Brian Masse: I've been through this and you're welcome to go on for hours, but the committee won't allow you.

It is a fine example. That's one, and there are other ways for corporations that have that intent to quite easily find that information about their competitors. They do that on a regular basis.

My point is, if you're asking for public taxpayers to fund and write off everything from a golf game to research and development or something else, there's probably a dual responsibility, in the context of having disclosure, to prevent organized crime and other nefarious activities that the public subsidizes through paying for police forces and agencies.

Mr. Milos Barutciski: Mr. Masse, all of us, everyone in this room, claim all kinds of exemptions in our income tax filings. It's up to the government, essentially CRA, to review our claims and decide whether those exemptions, those provisions, are legitimately done. This is no different.

Mr. Brian Masse: That's done through our regular tax filings. What you're asking for I guess is a blanket.... It's different from what the rest of the world is moving toward.

When you look at the European Union, at Australia, at other jurisdictions, they've been pulling the veil back on some of these things because the damage is far greater.

The Acting Chair (Mr. Dan Albas): Thank you for that. That's five minutes.

Before we go to MP Fergus, I have a quick question.

Whether it's private or public, what kind of information should be in that beneficial ownership registry?

Mr. Peter German: I don't think there's an easy answer to that one.

What you want to look at is what the international standards are. Canada wants to be in compliance with the international standards, or ahead of them.

I think the important thing is transparency. That's what this is all about. It's about transparency of ownership, so you know who you are dealing with. It's not about revealing tax forms or what your tax situation is. It's about the ownership of companies. It's about who the actual owner of a company is so that you know who you're dealing with and they're not hiding behind the corporate veil.

Mr. Milos Barutciski: Where I would come down is.... Peter just kind of elided from the real issue. You know who you're dealing with in transparency. I thought we were talking about money laundering and criminal activity.

Beneficial ownership is not about allowing me to know that I'm transacting with Mr. Masse through his personal holdco. The beneficial ownership argument is about making sure that whether it's corporates or drug dealers or kleptocrats, from whatever countries you chose to pick, they can't use the hiding of their identity to basically commit crimes, enable crimes, and keep the money.

That's what we thought we were about, not about knowing who I'm dealing with. I have a million and one ways.... I spend a lot of my time advising my clients on KYC and knowing who they're dealing with.

The Acting Chair (Mr. Dan Albas): Thank you for that.

We'll go to MP Fergus, for five minutes.

Mr. Greg Fergus: Thank you very much to our witnesses, Mr. German and Mr. Barutciski.

Mr. German, I would like to go back to the point that you raised in terms of the importance of the need to have enforcement as well as disruption capabilities. In a minute and a half, would you be able to elucidate and give the committee a better sense of that?

To be specific, what types of enforcement and disruption tools do you think would be useful, and what models can you draw upon from around the world?

Mr. Peter German: The term "disruption" comes from the consultation paper, which I believe refers to the Department of Finance's three pillars. I don't think that's a good word to use. I think "disruption" is supposed to be an umbrella for a number of different topics. We're really talking about enforcement, so ideally, the third pillar is enforcement.

When you're talking about enforcement, that means you have to have units of trained specialists. They don't necessarily have to be police officers, but we're talking about law enforcement units. You certainly see this in the United States with the task force approach—task forces dealing with money laundering and so forth. We don't have that now. We did have it. I'm saying it has to be reconstituted.

● (1740)

Mr. Greg Fergus: Thank you very much—and you're on time.

[*Translation*]

Mr. Barutciski, I appreciate your comments. I would just like to continue the discussion on that type of beneficial ownership, be it private or public.

I know that you prefer a private or confidential system managed by the government, but can you tell us what the benefits of a public system are? In what context should a public system be used?

Mr. Milos Barutciski: That's not really my major concern. I understand completely why a registry of beneficial ownerships would be wanted. It is completely logical. That should exist to facilitate the application of the law.

Mr. Greg Fergus: Do any countries have a state-managed system that is not accessible to the public?

Mr. Milos Barutciski: I don't know yet, as this is completely new. All this movement related to beneficial ownerships is completely new.

[*English*]

Beneficial ownership has been an issue for maybe three or four years at most.

[*Translation*]

Everyone is currently experimenting with this. People who are active in the field—be they lawyers, journalists or other stakeholders—prefer a system that is open to the public for reasons of transparency. I completely understand this, but that is not really the goal here. The goal is to facilitate the application of the law and prevent any violations.

If someone knows that they will use a digital company to conceal illicit funds and that their interest in that company will be revealed through a system that enables the police or an investigator to find them eventually, that will deter them from using this option. That is sort of the reasoning behind it. In my opinion, making everyone's private affairs and ownership interests public is neither necessary for the application of the law nor effective for there to be transparency when it comes to

[*English*]

due diligence, to let you know who you're talking to, who you're dealing with.

[*Translation*]

There are other ways to do that.

[*English*]

Mr. Greg Fergus: This is for whoever would like to answer. We've talked about beneficial ownership. We've talked about measures of enforcement. You haven't mentioned some of the new technologies that have come into place, for example, blockchain technologies. What are some of your concerns on this? What should we be looking at to try to get ahead of this development?

Mr. Peter German: Actually, I have a whole menu of things I could mention if we had time, but certainly with regard to blockchain, this seems to be a very positive development. There are all sorts of potential uses for blockchain. It could revolutionize, essentially, the back office. It's not so much the blockchain. The concern seems to lie with the cryptocurrency and the fact that it can be used as an alternate form of cash by organized crime. I think that's where the emphasis is.

Going back to your earlier question about models, I'll just give a shout-out to la belle province, because what Quebec did after the Charbonneau commission, creating a unit of some 300 auditors and enforcement specialists to deal with the construction industry, is really a best practice, and it would be really nice to see that replicated in other provinces and so forth.

Mr. Milos Barutciski: First of all, I completely agree with what Peter just said. Quebec is at the forefront of that aspect of it—enforcing white collar crime and creating resources.

On the issues involving blockchain or..., the cryptocurrency is the most potentially dangerous from that perspective—I agree with Peter—but it's just one of several things we focus on and are studying and looking at. This is one we need to pay attention to.

I become very frustrated when we spend so much time talking about beneficial ownership or lawyers: "Why shouldn't lawyers be reporting?" I see where Peter is coming from. Lawyers do play a role. They don't, however, generally handle the money. To focus attention on those kinds of things, public versus private registry, while the big issues are unaddressed....

Let's talk about beneficial ownership. That's fine. How are you going to deal with trusts? In a common law regime, trusts are created almost by just a handshake. I may hold the legal title. I'll declare that. There is, however, a trust relationship established by a course of dealing, implied by law. Trust is a unique.... Corporate lawyers, tax lawyers, and estate lawyers use trusts to structure certain kinds of things in very creative ways. That's not going to be caught by the traditional beneficial ownership.

The U.K.'s beneficial ownership is moving in that direction, but much of the leading work on beneficial ownership and much of the stuff that goes on at the Financial Action Task Force is actually driven by civil law jurisdictions that have no concept of trust. There are many issues out there that you guys should be dealing with that are far bigger in terms of their dollar impact on crime and on the economy.

● (1745)

Mr. Greg Fergus: Mr. Chair, Mr. German made reference to there being a number of things he could speak to that he has written on. I wonder whether he could submit that.

The Chair: I picked up on that.

I think you said, Mr. German, that there's a menu of items. I apologize for not being here and for the disruptions with votes in the House. If you have further information that you would want to send by note to the clerk, it will get to us and we'll examine it.

With that, I would like to thank you both for answering members' questions. This is an important issue.

I hear you, Milos, that there are other issues we need to be looking at as well.

Thank you very much, gentlemen, for your evidence today.

We will suspend now and go in camera to deal with committee business.

[*Proceedings continue in camera*]

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